Washington Supreme Court

Supreme Court Docket No. 81295-1

Ct. of Appeal Div. I Docket No. 264122

Spokane Cy. Sup. Ct. Cause No. 07-1-01318-1

Spokane Cy. Dist. Ct. Cause Nos. CC1 & CC2

IN RE THE APPLICATION FOR A CITIZEN COMPLAINT, CHRIS ANDERLIK,

Petitioner-Appellant.

AMENDED AMICUS CURIAE BRIEF

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I. STATEMENT OF ISSUES

A. Whether the Supreme Court rule empowering courts to evaluate and authorize the filing of a citizen complaint violates the Washington Constitution.

II. INTEREST OF AMICUS CURIAE

The Animal Legal Defense Fund ("ALDF") is a national nonprofit organization of lawyers, law students, and other individuals committed to protecting the lives and advancing the interests of animals through the legal system. In addition to litigation, ALDF strives to end the suffering of abused animals by working toward stronger enforcement of anti-cruelty laws and humane treatment of animals. Part of ALDF's mission is educating of legal professionals and the public regarding legal jurisprudence known as Animal Law, as well as changing societal attitudes, practices, and policies about the value of animals within the legal system.

This case raises an issue of vital public importance because it presents the first opportunity for this Court to address the constitutionality of Washington's longstanding citizen criminal complaint process. As the citizen criminal complaint process applies in the present case to the allegation of cruelty to animals by agents of the State, this issue is of particular importance to ALDF and its members in Washington State.

III. INTRODUCTION

This amicus brief argues that the Washington Supreme Court rule allowing courts to evaluate and authorize the filing of a citizen complaint should be upheld as constitutional. In addressing this discrete argument, this brief seeks to preserve CrRLJ 2.1(c) for future instances where, as here, victims of tragic crimes seek to file a criminal complaint (or, in the case of animal victims, have a complaint filed on their behalf) when the prosecuting authority otherwise omits to do so.

Here, the district court erred in finding that CrRLJ 2.1(c) violates the separation of powers clause and thus is unconstitutional. CrRLJ 2.1(c) grants courts ***only*** the limited judicial power to consider the merits of a citizen complaint, defining a process nearly identical to the court's power to consider the merits of a complaint brought by the prosecuting authority. The rule does not violate the legislative function, as it was established pursuant to a law granting courts the power to regulate criminal procedure; and it does not violate the executive function, as it gives courts neither the power to control the prosecuting authority nor to interfere unilaterally with its duties. In both conception and execution, CrRLJ 2.1(c) is well within constitutional bounds.

As a case of first impression, though, it can nonetheless be useful to consider jurisprudence outside of Washington in evaluating the

constitutionality of a citizen-initiated complaint. In federal courts, citizen-initiated complaints have long been held not to violate the separation of powers doctrine. Significant to the analysis here, courts have held that citizen-initiated complaints do not disrupt the proper balance between the branches provided that the executive branch maintains control over the action. Likewise, in a number of state courts, both laws and court rules that authorize citizen-initiated complaints have been upheld as constitutional.

IV. ARGUMENT

A. The Text of CrRLJ 2.1(c) Grants Courts Only the Limited Power to Evaluate and Authorize a Citizen Complaint

Generally, CrRLJ 2.1 sets forth the guidelines for courts to use when evaluating and authorizing criminal complaints, citations, or notices to appear. CrRLJ 2.1(a) establishes how courts should evaluate a complaint brought by the "prosecuting authority," while CrRLJ 2.1(c) articulates how courts should evaluate a complaint brought by a *citizen.* But under the general tenets of the rule, irrespective of who brings the complaint, the court's role under each provision is the same: to evaluate the complaint's sufficiency and determine whether a criminal proceeding should initiate. Indeed, as CrRLJ 2(c) requires, if the "judge is satisfied that probable cause exists" for a citizen complaint, and other

considerations "justify filing charges," the court may "authorize the citizen to sign and file a complaint ***in the [same] form prescribed in CrRLJ 2.1(a).***" (emphasis added). The court's power under each rule is the same, as is the outcome of its analysis under each rule.

Nevertheless, insofar as citizens lack the institutional authority of a prosecuting attorney, CrRLJ 2.1(c) sets forth a number of additional considerations courts may take into account when deciding whether to authorize a citizen's criminal complaint. CrRLJ 2.1(c) (1)-(7). These considerations do not in any way expand the court's power beyond its usual judicial role of evaluating and authorizing a criminal complaint. They do not allow the court to draft its own complaint, appoint a special prosecutor, or, as Respondents have already conceded, even require the prosecuting authority to pursue the complaint once it is filed. *Respondents' Brief* at 4; RP (1-22-07) at 34-35.

To the contrary: the added considerations set forth in CrRLJ 2.1(c) (1)-(7) work to *limit* the court's power when considering a citizen complaint, ensuring that its actions (or the actions of the citizen complainant) do not infringe upon the authority granted to the "prosecuting authority" by CrRLJ 2.1(a). In pertinent part, these added considerations direct courts to review (i) "the prosecution standards under RCW 9.94A.440," (ii) "whether a criminal investigation is pending," and

whether (iii) "other criminal charges could be disrupted by allowing the citizen complaint to be filed." CrRLJ 2.1(c) (1)-(7). Further, at a hearing on the sufficiency of a citizen complaint, CrRLJ 2.1(c) specifically permits "evidence to be given by the county prosecuting attorney." *Id.* At each turn, CrRLJ 2.1(c) does not grant the court expanded power over functions usually reserved to the prosecuting authority, but limits the court's power to its usual—and ***discrete***—function of evaluating a criminal complaint.

B. Because it Infringes Upon Neither the Power of the Legislature nor the Executive, The Constitutionality of CrRLJ 2.1(c) is Not Questionable

As Judge Derr observed, if a court were to *compel* the prosecuting authority to pursue a citizen complaint, that court's actions would likely violate the separation of powers doctrine. *See* DCF: MD at 17-18. Respondents, however, improperly expand this observation by asserting that CrRLJ 2.1(c) itself is both (a) an improper "attempt to assign to the judiciary a function that our constitution assigns to the executive branch," and (b) an "improper intrusion by the judiciary upon duties belonging to the legislature." *Respondents' Brief* at 25-26. These arguments find no support in the text of the constitution or its jurisprudence.

The Court has long recognized that "Washington's constitution, much like the federal constitution, does not contain a formal separation of

powers clause." *Carrick v. Locke*, 125 Wn.2d 129, 134-135, 882 P.2d 173 (1994). As a result, "the separation of powers doctrine is grounded in flexibility and practicality, and rarely will offer a definitive boundary beyond which one branch may not tread." *In re Juvenile Director*, 87 Wn.2d 232, 240, 522 P.2d 163 (1976); *see also Beckley v. Valeo*, 424 U.S. 1, 131, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (holding that the "Constitution by no means contemplates total separation" of the three branches of government); *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425, 443, 97 S. Ct. 2777, 53 L. Ed. 867 (1977) (calling "archaic" the idea that the Constitution requires "three airtight departments of government").

Despite the separation of powers doctrine's inherent flexibility, Respondents nonetheless urge the Court to view the doctrine as absolute, precluding "the assignment to, or assumption by, one branch of a task that is more properly accomplished by other branches" and demanding that "no provision of law . . . threaten the institutional integrity of another branch." *Respondents' Brief* at 25 (citing *Carrick*, 125 Wn. 2d at 135). Even under this rigid articulation, however, neither the conception nor the execution of CrRLJ 2.1(c) runs afoul of the constitutional rule.

1. The Judiciary Was Specifically Empowered by the Legislature to Draft Procedural Rules Such as CrRLJ 2.1(c)

Article I, § 25 of the Washington Constitution directs the

legislature to prescribe how prosecutions shall be initiated. The legislature, in turn, specifically directed the Supreme Court to draft rules of criminal procedure such as CrRJL 2.1(c). RCW 2.04.190; *see also State v. Currie*, 200 Wash. 699, 707, 94 P.2d 754 (1939). In so doing, however, the legislature never (i) limited courts' power to hear citizen complaints, nor (ii) required courts to hear only those complaints brought by the prosecuting authority. To the contrary, a number of Washington state laws would seem to specifically contemplate the existence of criminal complaints brought by parties other than the prosecuting authority. *See* generally RCW 36.27.020(4); RCW 10.37.015.

For example, RCW 36.27.020(4) demands that "the prosecuting attorney shall . . . prosecute all criminal . . . actions in which the state or the county may be a party." If the rule were as absolute as Respondents would have it, and if the "legislature has restricted the filing of charges . . . [exclusively] to 'public attorneys,'" *Respondents' Brief* at 26, there would have been no need to explain that the law covered actions "in which the state or the county may be a party." The legislature would have simply required that the "prosecuting attorney shall prosecute all criminal actions." Likewise, RCW 10.37.015 requires that "no person shall be held to answer in a court for an alleged crime, unless upon an information filed by the prosecuting attorney . . . except in cases of misdemeanor." In a

case such as this, where a misdemeanor has been alleged, the prosecuting attorney's role is not defined as absolute.

At bottom, no "*statute* currently exists that grants the power to file charges . . . to a private citizen of this state." *Respondents' Brief* at 26 (emphasis added). But a statute does exist giving the Supreme Court authority to draft rules of criminal procedure. One of those rules—CrRLJ 2.1(c)—outfits private citizens with the power to file charges. By even the strictest reading of the separation of powers clause, the Court's right to grant this power is well within its legislative mandate, and, thus, the rule cannot be said to violate the Constitution.

2. CrRLJ 2.1(c) Does not Vest a Court with the Executive Function, But Gives It Authority to Approve a Citizen Complaint as It would a DA Complaint

Respondents argue that CrRLJ 2.1(c) "is an improper attempt to assign to the judiciary a function that our constitution assigns to the executive branch," because the "decision to charge an offense is an executive, not a judicial function." *Respondents' Brief* at 25-26. But as previously noted, CrRLJ 2.1(c) does not give courts the power to charge an offense or otherwise initiate a complaint—it only gives courts the authority to evaluate a complaint brought by a citizen and then "authorize the citizen to sign and file a complaint." The cases Respondents cite are

inapposite to this distinction. *See id.* (citing *State v. Finch*, 137 Wn.2d 792, 810, 975 P.2d 967 (1999) (upholding denial of motion to recuse prosecutor for violating the "fairness doctrine" because the doctrine applies only to "judicial decision makers" and a "prosecutor's determination to file charges" is "executive, not adjudicatory"); *People v. Adams*, 43 Cal. app 3d 697, 117 Cal. Rptr. 905, 911-12 (1974) (discussing statutes struck down as violative of the constitutional doctrine of separation of powers because they "require consent of the prosecutor for a court to exercise judicial authority")).

Likewise, CrRLJ 2.1(c) does not impinge upon the prosecuting authority's power to decide whether or not to prosecute a case. *See Respondents' Brief* at 26, citing *Greenlaw v. United States*, __ U.S.__, 128 S. Ct. 2559, 2565, 171 L. Ed. 2d 399 (2008) (the executive branch has exclusive authority and absolute discretion to decide whether to prosecute a case); *United States v. Nixon*, 418 U.S. 683, 693 94 S. Ct. 3090, 41 L. ed. 2d 1039 (1974) (same). CrRLJ 2.1(c) addresses citizen complaints only up to the point they are "signe[d] and file[d]." After that, as the district court correctly acknowledged, the prosecution will proceed as the prosecution deems appropriate," and may even choose to immediately seek voluntary dismissal. RP (1-22-07) at 34-35. Just as with a criminal complaint filed pursuant to CrRLJ 2.1(a), the prosecuting authority will

have complete authority to pursue prosecution—or not. *See, e.g., Inmates of Attica Correctional Facility v. Rockefeller*, 477 F. 2d 375, 379-380 (2d Cir. 1973) (affirming dismissal of class action which sought to overturn prosecutorial refusal to pursue certain criminal claims).

Respondents argue that CrRLJ 2.1(c) would allow courts to "wear two hats at the same time" and evaluate probable cause while "evaluating the wisdom of filing charges in light of the complainant's motives." But again, in determining whether to allow a citizen complaint to go forward, CrRLJ 2.1(c) requires that the court give great deference to the prosecuting authority, allowing it to present evidence at the hearing and requiring the court to consider whether a citizen complaint would disrupt criminal charges that are already pending. *See* CrRLJ 2.1(c) (1)-(7). Through these allowances to the prosecutorial authority, CrRLJ 2.1(c) not only checks the court's power to properly evaluate a citizen's complaint, but also provides the prosecuting authority an audience in the proceedings, thereby ensuring that the judiciary's power does not improperly infringe upon the prosecutor's authority to initiate a criminal complaint of its own.

C. Federal Jurisprudence Provides a Framework that Supports the Constitutionality of CrRLJ 2.1(c)

CrRLJ 2.1(c) only grants citizens the power to initiate a criminal suit, a power Respondent claims is reserved to the executive branch. Even

though the separation of powers challenge is raised under Washington's Constitution, "federal principles regarding the separation of powers doctrine are relied upon in interpreting and applying the state's separation of powers doctrine." *Respondents' Brief* at 25 (citing *State v. Wadsworth*, 139 Wn.2d 724, 735, 991 P.2d 80 (2000)). Respondents also correctly note that the separation of powers doctrine "does not require that one branch of government be hermetically sealed off from another, the doctrine does seek to ensure that the fundamental functions of each branch remain inviolate." *Respondents' Brief* at 25. The United States Supreme Court has held that the Constitution does not require that the three branches of government "operate with absolute independence." *United States v. Nixon*, 418 U.S. at 707. Similarly, "[w]hile the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635, 72 S.Ct. 863, 96 L. Ed. 1153 (1952) (concurring opinion).

Even though the executive branch typically maintains the prosecutorial function, federal courts have clearly recognized that prosecutorial functions are not always undertaken by executive branch officials. *See United States ex. rel. Kelly v. Boeing Co.*, 9 F.3d 743 (9th

Cir. 1993). Federal courts have consistently maintained the constitutionality of *qui tam* actions, which are brought by private citizens. *Id.* at 750-751. *Qui tam* actions, created in various Congressional acts, are consistently held to not violate the doctrine of separation of powers. Moreover, *qui tam* actions are analogous to the citizen-initiated complaint outlined in CrRLJ 2.1(c).

In analyzing the constitutionality of a *qui tam* action, the Ninth Circuit Court of Appeals properly framed the issue:

> But the question in this case is not whether the qui tam provisions fit nearly into usual public power distribution patterns; rather the question is whether the Constitution *prohibits* use of this mechanism of civil law enforcement . . . In other words, [the Court] must decide whether the separation of powers principle inherent in the structure of the Constitution proscribes assignment of this essentially prosecutorial function to private parties.

To answer this question, it is essential to consider whether the provisions "disrupt the proper balance between the coordinate branches [by] prevent[ing] the Executive Branch from accomplishing its constitutionally assigned functions." *Id.* at 751 (citing *Morrison v. Olson*, 487 U.S. 654, 108 S.Ct. 2597, 101 L. Ed. 2d. 569 (1988)) (internal citations omitted). To determine whether a citizen-initiated complaint undermines the role of the executive branch, the court needs to determine whether the *qui tam* provisions accord the executive branch "sufficient control" over the

conduct of the citizens bringing the complaint. *Id.* (citing *Morrison*, 487 U.S. at 696). Courts unequivocally find that the executive branch has this sufficient control; thus, the *qui tam* provisions do not violate the principle of separation of powers. *See* e.g., *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994) (stating that citizen-initiated complaints filed under *qui tam* provisions "do not contradict the constitutional principle of separation of powers "where they have been crafted with particular care to maintain the primacy of the Executive Branch"); *United States ex rel. Kreindler & Kreindler v. United Tech. Corp.*, 985 F.2d 1148, 1155 (2d Cir. 1996) (stating that *qui tam* provisions "do not usurp the executive branch's litigating function because [they give] the executive branch substantial control over the litigation.").

In *Morrison*, the Supreme Court held that the independent counsel provisions of the Ethics in Government Act (the "Ethics Act") do not impermissibly interfere with the functions of the executive branch in violation of the separation of powers principle. 487 U.S. at 697. *Morrison* provides federal courts, and this Court, with a baseline to assess whether a Congressional act has unconstitutionally diminished executive power by allowing private plaintiffs to sue in the name of the United States for an injury to the treasury. The Ethics Act gave independent counsel "full power and independent authority to exercise all investigative

and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice." *Id.* at 662. (citing 28 U.S.C. § 594(a)) (internal quotations omitted). This power includes conducting grand jury proceedings, initiating and conducting civil and criminal litigation, accepting referrals of matters from the Attorney General, framing and signing indictments, filing informations, appealing decisions and handling all aspects of any case "in the name of the United States." *Id.* Moreover, independent counsel could draw on public resources by appointing employees and requesting and obtaining assistance from the Department of Justice. *Id.* Once a matter had been referred to independent counsel under the Act, the Attorney General and the Justice Department were "required to suspend all investigations and proceedings regarding the matter." *Id.* at 662-63 (citing 28 U.S.C. § 597(a)).

Despite this broad grant of executive power to independent counsel, the Supreme Court held that the Ethics Act did not work as a "judicial usurpation of properly executive functions," nor did it impermissibly undermine the powers of the executive branch. *Id.* at 695. The Supreme Court found that even though the Ethics Act clearly reduces the amount of control the executive branch has over a certain class of criminal activity, the branch still maintains sufficient control over the

independent counsel. *Id.* The Ethics Act allows the Attorney General to remove independent counsel for "good cause," and independent counsel can only be appointed by the Attorney General's specific request. Moreover, the Attorney General's decision not to request appointment, is committed to his un-reviewable discretion. *Id.* at 695-696.

Despite Respondents' contentions, CrRLJ 2.1(c) is not an improper attempt to assign to the judiciary a function that the Washington Constitution assigns to the executive branch. *Respondents' Brief* at 25. First, it is important to examine the limited scope of CrRLJ 2.1(c), which only allows a private citizen to "institute a criminal action." Under this rule, the citizen has a far more limited ability then the independent prosecutor in *Morrison,* who could exercise all investigative functions, prosecute the action, and receive assistance from the state Attorney General. Second, as the above federal case law demonstrates, this executive power *may* be assigned, *if* the executive branch is allowed adequate control. After the complaint is initiated under CrRLJ 2.1(c), the prosecutor maintains discretion as to whether to ultimately prosecute. *Respondents' Brief* at 4; RP (1-22-07) at 34-35. Under *Morrison*, this control is sufficient to withstand a challenge that CrRLJ 2.1(c) violates the separation of powers doctrine.

Moreover, under CrRLJ 2.1(c), the judiciary is not required to

"wear two hats at the same time." *Respondents' Brief* at 27. As the Supreme Court held in *Morrison,* there is no "*judicial* usurpation of properly executive functions" if, once the court has appointed counsel, it has no power to supervise or control the activities of counsel. Similarly, under CrRLJ 2.1(c), once the complaint is allowed, the court has no supervisory or administrative functions over the action whatsoever. The court only makes the initial determination to allow a private citizen to bring the action, but takes a "hands-off" approach once the matter is filed.

D. Other States Acknowledge the Inherent Power of the Judiciary to Allow Citizen-Initiated Complaints

A number of other states recognize the right of a private citizen to petition or approach a judge, grand jury, or other official to request that a complaint be filed against an individual. *See* Jennifer H. Rackstraw, *Reaching for Justice*, 9 Animal L. 243, 259 (2003). For example, Wisconsin permits a "John Doe proceeding," which begins when a private citizen brings a criminal complaint before a judge. Wis. Stat. § 968.26. The judge then has discretion to evaluate the complaint, examine witnesses, and issue an arrest warrant. *Id.* The statute authorizing John Doe proceedings is deeply rooted in Wisconsin's history, dating back to the 19th century. *State v. Unnamed Defendant*, 150 Wis. 2d 352, 358-359, 441 N.W.2d 696 (1989), *superseded by statute*, 1991 Wis. Sess. Laws 88,

(citing *State ex rel. Long v. Keyes*, 75 Wis. 288, 292, 44 N.W. 13 (1889); *State v. Washington*, 83 Wis. 2d 808, 819, 266 N.W.2d 597 (1978)).

In *Unnamed Defendant*, the Supreme Court of Wisconsin considered whether the John Doe proceeding violates the separation of powers doctrine by granting judges powers that are outside of the judicial sphere. *Id.* at 355, 358. According to the court, "[t]he salient aspect of the John Doe proceeding for the purpose of this case -- judicial initiation of criminal prosecution -- has never appeared to be considered to be inconsistent with the doctrine of separation of powers." *Id.* at 363-64. Further, the notion that "initiation of criminal prosecution is an exclusively executive power in Wisconsin ... is erroneous."[1] *Id.* at 358.

In *Unnamed Defendant*, the Wisconsin Supreme Court also acknowledged that, since John Doe proceedings were permitted at the time of the adoption of the Wisconsin Constitution, the framers likely considered the procedure's constitutionality and determined that it did not violate any constitutional principles. *Id.* at 362 (citing *State v. Coubal*, 248 Wis. 247, 256, 21 N.W. 2d 381 (1946)). According to the court, "[a]dded weight to the constitutional validity of this procedure is given by

[1] In his concurrence, Justice Day provided further justification for the validity of the John Doe proceeding stating, "[c]rime victims should have recourse to the judicial branch when the executive branch fails to respond. This seems to me in keeping with constitutional rights." *Unnamed Defendant*, 150 Wis. 2d at 372 (Day, J. concurring).

the long and continuous use of the procedure since 1848, and the uniform acquiescence in its constitutionality." *Id.* at 362. The same principle is applied here insofar as Washington's authorization of citizen-initiated complaints dates back to the state's early history. *See* Bal. Code § 6695 (1897); Pierce's Code § 3114 (1902); Rem. Rev. Stat. § 1949 (1932).

As Petitioner notes, Pennsylvania permits private citizens to bring criminal complaints directly to an attorney for the Commonwealth, and, upon the attorney's denial to prosecute, to the court of common pleas for review. Pa. R. Crim. P. 506[2]. The rule authorizing citizen-initiated complaints has been invoked numerous times in Pennsylvania and has survived challenges to the judicial review component alleging a violation of the doctrine of separation of powers. *See e.g., Commonwealth v. Brown*, 447 Pa. Super 454, 669 A.2d 984 (1995), *aff'd by*, 550 Pa. 580, 708 A.2d 81 (1998). In *Brown*, the court stated that, as to decisions regarding citizen-initiated complaints, "we conclude that the separation of powers doctrine is not violated by a limited judicial review of a prosecutor's decision[.]"[3] 447 Pa. Super at 463.

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[2] Formerly numbered 106.

[3] This conclusion was based on the court's lack of jurisdiction to find that a Supreme Court-created rule constituted a separation of powers violation and the court's determination that "the separation of powers doctrine does not entirely preclude judicial review of discretionary decisions made by the executive branch." *Brown*, 447 Pa. Super. at 462-63. Note that the court did not formally rule on the separation of powers violation because it found that the Attorney General failed to properly preserve the issue at trial. *Id.* at 461.

In her brief, Petitioner correctly draws comparisons between the Pennsylvania rule and CrRLJ 2.1(c). *See Petitioner's Brief* at 30-32. Respondents argue that Pennsylvania's Rule 506 cannot be compared to CrRLJ 2.1(c) because (i) the histories of Washington and Pennsylvania differ, and (ii) Pennsylvania's authorization of citizen-initiated complaints has statutory roots which are absent from CrRLJ 2.1(c)'s legacy. *See Respondent's Brief* at 30-31. Respondents fail to specify any meaningful ways in which Pennsylvania and Washington history differs and instead simply cite authority for the proposition that the power of citizens to initiate complaints dates back to the early history of the state. *See id.* The same is true in Washington; thus, the purported difference Respondents would draw is not truly a distinction. Furthermore, while there may be a history of statutory support for Pennsylvania's Rule 506, the fact remains that it is a judicial rule of criminal procedure. CrRLJ 2.1(c) is also supported by statutory authority permitting the Supreme Court to create judicial rules governing procedure. *See* ARCW § 2.04.190.

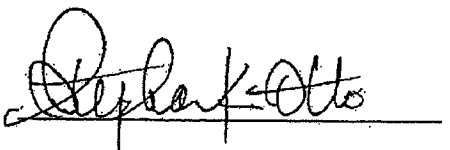
Regardless of historical and statutory roots, both CrRLJ 2.1(c) and Pennsylvania's Rule 506 do not violate the doctrine of separation of powers because citizen-initiated complaints do not amount to one branch of government to infringing on another branch's duties. Respondents point out that prosecutors in Pennsylvania have the authority to dismiss a citizen

initiated complaint after the complaint has been filed. *See Respondent's Brief* at 31-32. But they fail to mention that the same is true in Washington; prosecutors can refuse to prosecute a citizen-initiated complaint even after a finding of probable cause by a judge. *See Respondent's Brief* at 4; RP (1-22-07) at 34-35.

These states are not alone in vesting citizens with the power to initiate criminal complaints; other states also have a mechanism similar to CrRLJ 2.1(c). *See* N.J. Ct. R. 7:2-2(a)(1) (a citizen can bring a complaint in accordance with a court rule that states that, upon a finding of probable cause by the judge, the judge can issue "[a]n arrest warrant or summons on a complaint charging any offense made by a private citizen."); Ohio Rev. Code Ann. § 2935.09(D) (permitting a citizen to bring an affidavit charging an offense to a judge, prosecutor, or magistrate for a determination as to whether an official complaint should be filed). In West Virginia, private citizens can present a complaint to the grand jury, and the grand jury can subsequently decide to indict without obtaining a signature from the prosecutor. *See State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 437, 452 S.E.2d 893 (1994). The *Bedell* court affirmed this procedure, stating that "[v]esting discretion in the prosecuting attorney does not foreclose a citizen's right to seek redress through the court for personal wrongs." *Id.* at 438.

Dated this February 24, 2009

ANIMAL LEGAL DEFENSE FUND



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